

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

New Landing Utility, Inc.	:	
	:	04-0610
Proposed general increase in water	:	
and	:	
Sewer rates.	:	

**MOTION TO RECONSIDER**

Pursuant to 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission (“Staff” and “Commission”), by and through its attorneys, hereby files its Motion to Reconsider the ruling, entered December 6, 2004, denying Staff’s Motion to Dismiss. In support thereof, Staff respectfully states as follows:

**I. INTRODUCTION**

On December 2, 2004, Staff filed a Motion to Dismiss (“Motion”) this proceeding, premised upon New Landing Utility, Inc.’s (“New Landing” or “Company”) failure to request or receive Commission approval for the transfer of New Landing stock from American Mortgage Investors (“AMI”) to Dame Co. in 1984. At a status hearing on December 6, the Administrative Law Judge (“ALJ”), without briefing or arguments, summarily denied Staff’s Motion. The ALJ when making his ruling stated that the stock transfer took place more than twenty years ago and referenced the utility’s annual reports. The ALJ also referenced Section 7-204 of the Public Utilities Act (“Act”) (220 ILCS 5/7-204), which provides for an exception, for mortgage or pledge transactions, to the approval requirement for reorganizations.

## II. PROCEDURAL BACKGROUND

On September 3, 2004, New Landing filed tariffs for a proposed general increase in rates pursuant to Section 9-201 of the Act. The Commission entered an Order suspending the tariffs and initiated this proceeding, Docket No. 04-0610, on October 6, 2004.

New Landing had filed similar tariffs on March 11, 2004. The Commission entered an Order suspending those tariffs and initiated Docket No. 04-0321 (“original rate proceeding”) on April 7, 2004. At a status hearing on August 24, 2004, New Landing announced its intent to withdraw the original rate proceeding. New Landing, through its legal counsel, explained:

...after analyzing the current situation, which includes outstanding affiliated interest agreements, rental agreements, legal services agreements, a *stock sale* and some other agreements that may exist have not been approved by the Commission. And we feel that it's in our best interest and prudent for us to seek approval of those agreements.

So we feel the most prudent matter at hand is for us to withdraw the current rate case pending before the Commission and refile it next week and in addition to that file a petition to approve the affiliated interest agreements. (04-0321, Tr., p. 42, emphasis added)

On September 3, 2004, the Company filed a Motion to Withdraw the Tariff Schedules (“Motion to Withdraw”) it filed on March 11, 2004. On September 28, 2004, the Commission granted the Company’s Motion to Withdraw and the tariff sheets were permanently cancelled and annulled. The only substantive ruling made by the Commission in Docket No. 04-0321 was the Order that granted the Company’s Motion to Withdraw the Tariff Schedules. At the time of the withdrawal, discovery was still underway in that docket. Staff had not yet filed its direct testimony and had filed no

substantive motions.<sup>1</sup>

The Company then filed the tariffs, which form the basis of this proceeding, on September 3, 2004. On November 9, 2004, New Landing filed a Petition for Approval of Agreements with Affiliated Interests, which was docketed as No. 04-0666. In Docket No. 04-0666, the Company seeks approval of affiliate agreements regarding legal services and office space. (See Docket No. 04-0666, Verified Petition)

### **III. ARGUMENT**

#### **A. Section 7-203 of the Act Requires Commission Approval of Transfers of the Right to Own, Operate, Manage or Control Public Utilities**

Section 7-203 of the Act (formerly Ill. Rev. Stat. 1981, ch. 111 2/3, par. 29) provides:

No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to or affecting any such franchise, license, permit or right be valid or of any force or effect whatsoever, unless such assignment, lease, contract, or agreement shall have been approved by the Commission. (220 ILCS 5/7-203)

The issue of control was discussed in Peoples Energy. (See Peoples Energy Corporation et al., v. Illinois Commerce Commission, 142 Ill.App.3d 917,925-926, 492 N.E.2d 551, 558-559 (1986). There, the Illinois Appellate Court addressed the issue of control in the context of making a determination as to whether the holding company had indirect control such that it would meet the definition of a public utility in the Act. The discussion is relevant to a Section 7-203 right to manage or control analysis. The court distinguished between business control as is exercised by the holding company in terms of ownership of common stock, common directors and officers, and etc., and the

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<sup>1</sup> Staff filed a procedural motion, Motion to Modify the Schedule, on May 6, 2004.

day to day operations and oversight of property related to public utility service. (Id.) In Peoples Energy, the Illinois Appellate Court found that while the holding company did have business control of the public utilities, it did not have the type of indirect control over the operating utilities which extended to plants, property or equipment devoted to public use that would bring it within the definition of public utility.

The Illinois Appellate Court went further and interpreted Section 7-203 of the Act to require Commission approval of stock transfers. (Id., at 930, 561) In Peoples Energy, the Commission asserted jurisdiction over a reorganization of Peoples Energy Corporation (“Peoples Energy”), the holding company of Peoples Gas Light and Coke Company (“Peoples Gas ”), North Shore Gas Company (“North Shore”), and Natural Gas Pipeline of America (“Natural Gas”). Under the reorganization, Peoples Energy continued to hold the two utilities, Peoples Gas and North Shore, but a newly formed subsidiary that became a separate holding company, owning the outstanding common stock of the other subsidiaries then owned by Peoples Energy. The Illinois Appellate Court found that Peoples Energy was not a public utility and thus was not subject to the Commission’s jurisdiction regarding the reorganization. (Id., at 561, 22) The court then found that there were no transactions relative to the reorganization which involved Peoples Gas or North Shore, thus Section 7-203 approval was not required as to those two utilities. (Id.) Then, in considering whether the transaction as it related to Natural Gas required Commission approval, the Illinois Appellate Court stated,

Next, we must determine whether the trial court properly determined that Natural Gas is not a public utility. Since section 29 [now, 7-203] of the Public Utilities Act requires that the transfer of the right to control any public utility be approved by the Commission (Ill. Rev. Stat. 1981, ch. 111 2/3, par. 29), if Natural Gas is a public utility, then the

transfer of its stock ownership from Peoples Energy to MidCon required Commission approval. (Id., at 561, 22-23)

The court construed the Section 7-203 requirement for Commission approval for a transfer of the right to control a public utility to include a stock transfer. In the pending proceeding, the transfer of New Landing's stock from AMI to Dame, Co. clearly falls within the Section 7-203 requirement mandating Commission approval.

**B. New Landing Has Failed To Comply With Section 7-203 of the Act**

**1. Ownership and Control of New Landing was transferred**

According to the Commission Order in Docket Nos. 79-0673 and 79-0675 Consolidated, in 1976, American Mortgage Investors ("AMI") acquired ownership of all outstanding shares of New Landing's common stock. (See Final Order Docket Nos. 79-0673/79-0675 Cons., p. 2 (Jan. 14, 1981)) According to the Company's responses to Staff data requests, Dame Co. purchased the stock of New Landing from AMI on May 24, 1984.<sup>2</sup> (See attached Exhibit A) When Dame Co. assumed ownership of the New Landing stock, the President of Dame Co., Gene Armstrong, also became the President of New Landing. (See Direct Testimony of Gene L. Armstrong ("Armstrong Testimony"), p. 1) Thus, Dame Co. assumed business control, as the corporate parent, and control over the day-to-day operations and oversight of utility property.

During the pendency of Docket No. 04-0321, Staff became aware of the transfer and was unable to locate a Commission Order granting approval for the transfer. Staff

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<sup>2</sup> At a status hearing on October 20, 2004, the Company asserted in the current rate proceeding that, to the extent it was necessary, it would update, revise or supplement the data request responses from the original rate proceeding. (Docket No. 04-0610, Tr., pp. 33-35) Staff has received no update or revision to the attached response.

informed New Landing's president and legal counsel of the necessity of Commission approval of the stock transfer from AMI to Dame Co. The statement, quoted above (at page 2), made when New Landing indicated its intention to withdraw Docket No 04-0321, reflected the Company's awareness of Staff's position regarding Commission approval of the transfer. More recently, Staff notified New Landing by letter that failure to comply with Section 7-203 requirements could result in a motion to dismiss or civil penalties under Section 5-202 of the Act. See attached Exhibit B.

## **2. New Landing Has The Duty To Comply With The Act**

While the Commission has general supervisory authority over public utilities, the public utilities are required to "...furnish to the Commission all information required by it to carry into effect the provisions of this Act..." (See 220 ILCS 5/4-101 and 5/5-101 generally) It was the duty of AMI and New Landing to petition the Commission for approval of the stock transfer. When summarily denying Staff's Motion, the ALJ referred to the twenty years that had passed since the stock transfer. The length of time since the transaction occurred is not only irrelevant to the disposition of the Motion but it does not act as a bar to subsequent Commission enforcement of the Section 7-203 requirement and violation.

This is not the first time that a utility has failed to obtain Commission approval before effecting a transaction for which such approval is statutorily mandated. Numerous examples exist of the Commission taking up a review and issuing an order subsequent to the date on which a transaction subject to Commission approval has been accomplished. On November 30, 1999, United Water Resources, Inc. ("UWR") and United Water Illinois, Inc. ("UWI"), a public utility, filed a petition seeking

alternatively, either a declaratory ruling by the Commission that approval was not required or a Commission ruling granting approval of the transaction under Section 7-204, for a February 1999 transaction pursuant to which UWI was shifted from being a wholly-owned fourth-tier subsidiary of UWR to being a wholly-owned second tier subsidiary of UWR. (Docket No. 99-0642, Order, January 26, 2000) A Commission Order was entered granting Section 7-204 approval on January 26, 2000. On November 25, 2002, Commonwealth Edison Company ("ComEd") filed a petition requesting that the Commission reopen Docket 00-0078 and modify the Commission's Order to reflect ComEd's agreement to pay a \$ 900,000 fee, as required by Section 6-102 of the Act, on a financing completed by ComEd two years earlier, on September 14, 2000. (Docket No. 00-0078, Order, December 4, 2002) In yet another instance, on September 16, 2002, Illinois Gas Company ("Illinois Gas") filed a petition pursuant to Section 6-102(b) of the Act seeking an order authorizing indebtedness of \$ 32,781.24 aggregate principal amount of promissory notes, that were entered into on December 6, 2001 to finance the purchase of a vehicle used for supervision of engineering and construction jobs. (Docket No. 02-0603, Petition, Exhibit A and Order, November 20, 2002) In each of the foregoing examples, the utility had already consummated the transaction at the time it filed its petition seeking Commission approval. Further, in each docket, the Commission appropriately exercised its authority in regards to reviewing and approving the transaction, regardless of the fact that the transaction had already been consummated.

Although each docket cited above was uncontested and the Commission granted the requested approval, the Commission has also withheld its approval from such

transactions. In Klopf v. Illinois Commerce Commission, 54 Ill. App. 3d 491, 492, 369 N.E. 2d 906 (1977), the court affirmed the Commission determination that a railroad's purported sale of real property to adjoining landowners without prior Commission approval was void pursuant to Section 7-102 of the Act. (See Klopf, p. 492, 907) At issue in Klopf, were parcels of former railroad right of way that had been abandoned. Both the Illinois Department of Conservation ("Department") and a group of adjoining landowners expressed interest in the property. The railroad accepted an offer by the adjoining landowners to purchase the property conditioned upon Commission approval of the sale. The railroad filed a petition with the Commission seeking approval under Section 27 of the Act. (Ill. Rev. Stat. 1973, ch. 111 2/3, par. 27, now 220 ILCS 5/7-102) However, on September 20, 1973, while the petition for approval was still pending before the Commission, the railroad executed the deed to the property. Subsequently, the Department submitted an offer but was informed that the property had already been sold subject to Commission approval. The Department filed a petition with the Commission seeking permission to institute condemnation proceedings. The proceedings were consolidated and the Commission entered an Order on May 15, 1975, finding that the sale of the land by the railroad, without prior Commission approval was void and denied approval of the proposed sale. The Commission granted the petition of the Department and authorized it to acquire by purchase or condemnation title to the abandoned right-of-way for public use.

In Klopf, pursuant to Section 7-102 of the Act, the Commission voided the railroad's sale of property when the railroad failed to obtain Commission approval prior to completing the transaction. At issue, in the current proceeding, is the Commission



approval pursuant to Section 7-203 of the Act, which provides “No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased ...be valid or of any force or effect whatsoever, unless ... approved by the Commission.” Thus, without prior Commission approval, the transfer of New Landing’s stock from AMI to Dame Co. is invalid, illegal and without any force or effect.

Further, the length of time that passes after the transaction has been consummated and before a utility files a request seeking the statutorily required approval has no effect upon the Commission’s authority. The General Assembly has vested upon the Commission the authority and the responsibility to enforce the provisions of the Act. Nothing in the Act limits the Commission authority based upon the failure of a utility to timely seek statutorily required approval in a timely manner.

The failure of New Landing to seek Section 7-203 Commission approval for the stock transfer can be analogized to the facts in Metro Utility Company v. Illinois Commerce Commission, 262 Ill. App. 3d 266, 634 N.E. 2d 377, (1994). In the Metro case, the public utility appealed from a Commission Order, excluding, from test year expenses in a rate case, expenses that originated from unapproved contracts between the utility and an affiliate. (See Metro, p. 270, 380) The Commission Order stated:

...The Commission is of the opinion that an unapproved affiliated interest contract is void and the Commission is not required to recognize in a rate case the expenses pertaining to such an unapproved transaction. This is especially true in a case such as this where Metro has a history of failing to obtain approval of affiliated interest contracts. Id., at 273, 381

The Illinois Appellate Court first cited the principles of statutory construction. In

interpreting a statute, a court's primary function is to ascertain and give effect to the intent of the legislature. In doing so, the statutory language is the best indication of the legislature's intent. Statutory language should be given its plain meaning and the fullest possible meaning, reading the statute as a whole. (Id., at 273-274, 382)

The Illinois Appellate Court then affirmed the Commission decision stating:

Based on these principles, we conclude that under section 7-101 the Commission was required to disallow Metro's unapproved affiliated interest contracts in Metro's ratemaking case. This is because the plain language of section 7-101(3) provides that every public utility contract or arrangement with an affiliated interest not approved by the Commission under section 7-101 shall not be effective and is void. ( *220 ILCS 5/7-101(3)* (West 1992).) Because the unapproved contracts were of no effect and void, they could not serve as the basis for test year expenses. (Id., at 274, 382)

The court supported its finding with a discussion of public policy and legislative intent:

We also conclude that reading the statute as a whole favors this interpretation of section 7-101. If a public utility could fail to [\*\*383] seek approval for contracts with affiliates, as required by section 7-101, and still rely on those contracts in ratemaking proceedings, the utility would, to a great extent, be allowed to circumvent section 7-101 rendering it a nullity.

Metro's argument that it is being penalized twice is unpersuasive because it could have avoided any double penalty by simply [\*\*\*19] doing what section 7-101 required it to do--seek approval for the contracts--before it sought its rate increases.

In sum, the plain language of section 7-101 shows a clear [\*275] legislative intent that public utilities obtain Commission approval for any contract with an affiliated interest. Under section 7-101 if approval is not obtained, then the contract is void and ineffective. Allowing a public utility to use an unapproved contract as the basis for establishing expenses in a rate case would allow the public utility to circumvent largely the section 7-101 approval requirement and defeat the legislative intent espoused in section 7-101. For all these reasons, we conclude that the Commission did not err when it disallowed the unapproved contracts in Metro's ratemaking case. Moreover, we have determined that because under section 7-101 unapproved affiliated interest contracts are void the Commission is required to disallow such contracts in a ratemaking case.

(Id., at 274-275, 382-283)

The language of Section 7-203 of the Act, similar to Section 7-101 of the Act addressed in Metro, is clear on its face. The statutory language leaves no room to doubt the intent of the legislature that any transfer of ownership or control of a public utility is not valid or of any force or effect unless approved by the Commission. Many of the concerns addressed by the court in Metro are also present in New Landing's failure to acquire Commission approval for the stock transfer. For example, if the current owner/operator of New Landing could fail to seek approval of the transfer by which it took control of the public utility, but could still come before the Commission to seek an increase in rates, New Landing would be allowed to circumvent Section 7-203 of the Act, rendering it a nullity. Additionally, similar to Metro, New Landing has willfully placed itself in its current position. Nothing has prevented or is preventing New Landing from filing a petition seeking Commission approval of the stock transfer.

### **3. Filing Annual Reports does not satisfy Section 7-203 Requirements**

When summarily denying Staff's Motion, the ALJ also referred to the Commission's access to annual reports. However, these reports are irrelevant to the disposition of the Motion. The filing an annual report, even if the report notes the change in stock ownership, cannot be equated with the filing of a petition with the Commission requesting its approval of the stock transfer. The fact that New Landing may have filed an annual report for each of the 20 years that have passed since the transfer does not relieve New Landing of its legal duty to comply with the Act. New Landing could not substitute its duty to obtain Commission approval of the transfer with

a notation that the stock ownership had changed in a voluminous annual report filed by New Landing in the year of the stock transfer (as well as by every other public utility in the State of Illinois).

Since becoming aware of the omission, Staff has made multiple attempts to inform the Company of its responsibilities and to work with the Company to facilitate compliance with the Act. Notwithstanding Staff's efforts, the Company has failed to provide information, documentation or evidence of the Commission having approved the stock transfer of New Landing from AMI to Dame Co. Nor has the Company acted to correct the situation by filing a request for Commission approval of the stock transfer.

**C. The Section 7-204 Mortgage Or Pledge Transaction Exception Is Inapplicable**

When denying Staff's Motion to Dismiss, the ALJ referenced, without further explanation, the mortgage and pledge transaction exception contained in Section 7-204(a) of the Act. This section provides as follows:

Sec. 7-204. Reorganization defined; Commission approval therefore.

(a) For purposes of this Section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility; or by which 2 public utilities merge, or by which a public utility acquires substantially all of the assets of another public utility; provided, however, *that "reorganization" as used in this Section shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.* 220 ILCS 5/7-204 emphasis added.

For two reasons, the Section 7-204 mortgage exception does not apply to Staff's Motion and to the stock transfer between AMI and Dame Co. First, on its face, Staff's Motion relied, not upon Section 7-204 of the Act, but upon Section 7-203 of the Act. Second,

the stock transfer between AMI and Dame Co. was not a mortgage or pledge transaction. Rather, the transfer was a transfer of the right to own, operate, manage or control New Landing, precisely the type transaction that requires Commission approval under Section 7-203 of the Act.

Section 7-203 of the Act addresses situations in which the right to own, operate, manage or control a utility is transferred and contains no explicit exception for a mortgage or pledge transaction. The purpose of a mortgage or pledge transaction is not to transfer the right to control a utility, but rather a mortgage or pledge provides an interest in, or a lien on, land which provides security for the payment of a debt. (See Black's Law Dictionary, 5<sup>th</sup> Ed., pp. 911 & 1038) Thus, by limiting its application to transfers of the right to manage or control a public utility, Section 7-203 of the Act implicitly excludes mortgages and pledges.

The mortgage exclusion is explicit in Section 7-204 of the Act. Staff did not rely upon Section 7-204 of the Act because it was added by Public Act 84-617, § 1, effective Jan. 1, 1986. Thus, Section 7-204 of the Act was not effective until subsequent to the 1984 stock transfer. However, assuming for purposes of argument that Section 7-204 was in effect at the time of the stock transfer and that Staff had relied upon it in support of its Motion to Dismiss, the mortgage exclusion would still not apply to the transfer in question. As explained thoroughly, *supra*, the transfer between AMI and Dame Co. was not a mortgage or pledge. The purpose of the transfer was to change ownership and the right to manage and control the utility.

#### **IV. CONCLUSION**

This rate proceeding should be dismissed without prejudice, or in the alternative

New Landing should be ordered to file *instanter* a petition seeking Section 7-203 approval of the 1984 stock transfer.

It is New Landing under Dame Co. ownership that is seeking a general increase in rates pursuant to Section 9-201 of the Act. Gene L. Armstrong, the President of Dame Co., and also the President of New Landing since June 1984, provides information regarding the requested increase in rates. (Armstrong Testimony, p. 1) However, Dame Co. has failed to receive Commission approval to own, operate, manage or control a public utility. Absent Commission approval, the stock transfer is invalid and illegal. Until Dame Co. has sought and received Commission approval as required under Section 7-203 of the Act, New Landing as owned by Dame Co. does not have standing to come before the Commission to seek an increase in rates charged by New Landing. Since the only utility witness, Gene Armstrong, is President of New Landing as a result of the stock transfer, and the stock transfer cannot be deemed valid without Commission approval, Gene Armstrong has no standing to provide testimony on behalf of New Landing. New Landing should not be allowed to seek a general increase in rates under Section 9-201 of the Act when it is in flagrant violation of Section 7-203 of the Act.

For the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that the Commission dismiss the instant proceeding without prejudice, or in the alternative, direct New Landing Utility Company to file *instanter* a petition seeking approval of the 1984 stock transfer under Section 7-203 of the Act.

Respectfully submitted,



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Janis E. Von Qualen  
Carla Scarsella  
Staff Attorneys

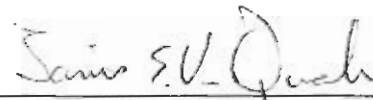
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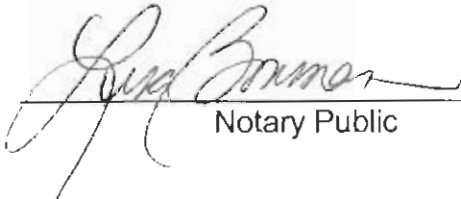
VERIFICATION

I, Janis E. Von Qualen, being first duly sworn, depose and state that I am an attorney for the Staff of the Illinois Commerce Commission; that I have read the foregoing Motion to Reconsider and know the contents thereof; and that the statements contained in the Motion are true, correct to the best of my knowledge, information and belief.



Janis E. Von Qualen  
Illinois Commerce Commission

Subscribed and sworn to before me  
this 17th day of December, 2004.

  
Notary Public



04-0610  
Motion to Reconsider

## **EXHIBIT A**

New Landing Utility, Inc.

Application  
for General Rate Increase

Ill.C.C. Docket No. 04-0321

Applicant's Response to Staff Data Request

**Staff Data Request FD-12**

***FD-12*** *Gene Armstrong's Direct Testimony indicates DAME Co. holds all of the stock issued by New Landing (p. 1). The Commission Order in Docket Nos. 79-0673/0675 Consolidated indicates Associated Mortgage Investors ("AMI") holds all of New Landing's stock (p. 2). When did DAME Co. acquire New Landing's stock from AMI? If DAME Co. did not acquire New Landing's stock directly from AMI, please specify when DAME Co. acquired all of New Landing's stock.*

Response:

DAME Co. acquired all of the Utility's common stock from AMI on May 24, 1984.

04-0610  
Motion to Reconsider

## **EXHIBIT B**

**STATE OF ILLINOIS**



**ILLINOIS COMMERCE COMMISSION**

November 29, 2004

Amy Muran Felton  
Atty. for New Landing Utility, Inc.  
Law Office of Amy Muran Felton  
110 S. Euclid Ave.  
P.O. Box 168  
Oak Park, Illinois 60303

Re: New Landing Utility, Inc.

Dear Ms. Muran Felton:

I write to you in regards to New Landing Utility, Inc.'s ("New Landing") compliance with Section 7-203 of the Public Utilities Act ("Act"). (220 ILCS 5/5-703, formerly Ill. Rev. Stat. 1981, ch. 111 2/3, par. 29) Based upon data request responses received in Docket Numbers 04-0321 and 04-0610, it is our understanding that in 1984 Dame Company purchased the stock of New Landing from AML. To our knowledge, this transaction was never presented to the Illinois Commerce Commission ("Commission") for approval.

Section 7-203 of the Act provides, "No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to or affecting any such franchise, license, permit or right be valid or of any force or effect whatsoever, unless such assignment, lease, contract, or agreement shall have been approved by the Commission." Thus, under Section 7-203 of the Act, the transfer of the right to control any public utility, such as a transfer of stock ownership, requires Commission approval. (See Peoples Energy Corporation et al., v. Illinois Commerce Commission, 142 Ill.App.3d 917,930, 492 N.E.2d 551, 561 (1986))

We have discussed this omission with you and Mr. Armstrong on a number of occasions.<sup>1</sup> To date New Landing has taken no action to come into compliance with the requirement for Commission approval of the stock transfer. Section 5-202 of the Act

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<sup>1</sup> Although we previously referenced Section 7-204 of the Act, we believe that Section 7-203 of the Act is the more relevant provision.

provides for civil penalties for any public utility, which fails to comply with the provisions of the Act. (See 220 ILCS 5/5-202, effective Aug. 8, 2003)

Accordingly, by this letter, I am requesting that New Landing provide the Staff with information that the 1984 stock transfer either has already been approved by the Commission or is not a transaction that falls within the requirements of Section 7-203 of the Act. If New Landing fails to do so, the Staff will be compelled to take such measures as it deems appropriate. These measures may include a motion seeking dismissal of Docket No. 04-0610 and relief under Section 5-202 of the Act.

Your immediate attention to this matter is requested. Staff intends to take action so that the Administrative Law Judge will be aware of this issue at the status hearing scheduled for December 6, 2004. The Staff remains available for conferring further with New Landing representatives for the purpose of resolving these matters by other methods.

Should you have questions or concerns regarding this matter, please do not hesitate to contact Carla Scarsella at (312) 793-3305 or me at (217) 785-3402.

Sincerely,

Janis E. Von Qualen  
Staff Counsel

Cc: Gene L. Armstrong  
Janice Dale  
Ralph E. Lowe  
Susan L. Satter